

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON, TACOMA DIVISION**

Joncee Hull and Sharon Shrout,
individually and on behalf of others
similarly situated,

Plaintiff,

v.

Multicare Health System, Multicare
Tacoma General Hospital, and
Marybridge Children's Hospital,

Defendants.

Case No:

Class Action Complaint

Jury Trial Demanded

INTRODUCTION

1. Plaintiffs Joncee Hull ("Plaintiff Hull") and Sharon Shrout ("Plaintiff Shrout") (or jointly as "Plaintiffs") bring this class action complaint against Multicare Health System ("MHS"), Multicare Tacoma General Hospital ("MTGH"), and Marybridge Children's Hospital ("MBH") (or jointly as "Defendants"), challenging their unfair, deceptive, and unlawful practice of

1 subjecting Plaintiffs and other similarly situated uninsured and underinsured
2 patients to collection efforts without first affirmatively screening them to
3 determine their financial eligibility for free or discounted hospital care under
4 Washington's Charity Care Act, RCW Ch. 70.170 ("Charity Care Act").

5 2. The classes in this case encompass Defendants' patients who were provided
6 emergency care and (1) were uninsured and not covered by a governmental
7 healthcare program or any other third-party payment source, or (2) were
8 underinsured because any private insurance, governmental healthcare
9 program or third-party source available to them was insufficient to cover the
10 full cost of their care.

11 3. Plaintiffs were underinsured when they went to Defendants' hospital and
12 received emergency care for which she alleges they should have received free
13 or discounted care under the Charity Care Act.

14 4. The Charity Care Act requires Defendant to grant free or discounted care to
15 qualifying uninsured or underinsured patients upon determining their income
16 is below 200% of the federal poverty level. This obligation to charity care
17 continues after the hospital assigns a patient's account to collections,
18 including after its collecting agency files suit to collect on the account. Under
19 current guidelines, 200% of the federal poverty level for a family of four in
20 Washington is an income of \$48,600 per year.

21 5. The Charity Care Act requires Defendant to screen its patients at or near the
22 time of service to determine whether they qualify for free or discounted care
23 based on their income. This affirmative proactive screening to determine each
24 patient's financial eligibility for charity care must occur *before* any collection
25 efforts.

26 6. Plaintiffs are informed and believe, and thereon allege, that Defendants have
27 engaged, and continue to engage, in a pattern and practice of collecting or
28

1 seeking to collect from patients without first affirmatively screening them to
2 determine whether they qualify for charity care based on their income.

3 7. Representing uninsured and underinsured patients, Plaintiffs brings their
4 claims in this case on behalf of themselves and similarly situated patients who
5 1) received emergency care medical treatment; 2) were uninsured or
6 underinsured by insurance or any third-party source of payment at the time of
7 treatment; and 3) were subject to collections even though Defendants' account
8 records show no affirmative screening to determine Plaintiffs' eligibility for
9 charity care.

10 8. On behalf of both uninsured and underinsured patients who received
11 emergency medical services from Defendants but did not receive the charity
12 care to which they were entitled, this lawsuit seeks: 1) declaratory and
13 injunctive relief to require Defendants to fully comply with the requirements
14 of the Charity Care Act; 2) recovery of excess payments made by Plaintiffs
15 and class members for the proposed uninsured and underinsured classes when
16 they were indigent; and 3) damages under the Washington Consumer
17 Protection Act RCW 19.86 for Defendants' unfair and deceptive practices.

18 9. Plaintiffs make these allegations on information and belief, with the exception
19 of those allegations that pertain directly to a plaintiff, which Plaintiff alleges
20 on her personal knowledge.

21 10. While many violations are described below with specificity, this Complaint
22 alleges violations of the statutes cited in their entirety.

23 11. All the conduct engaged in by Defendants took place in the Western District
24 of Washington.

25 12. Any violations by Defendants were knowing, willful, and intentional, and
26 Defendants did not maintain procedures reasonably adapted to avoid any such
27 specific violation.
28

JURISDICTION AND VENUE

13. Jurisdiction of this Court arises pursuant to the Class Action Fairness Act 28 U.S.C. § 1332(d), 1453, and 1711-1715 (“CAFA”), 28 U.S.C. § 1331, and 28 U.S.C. § 1367 for supplemental state claims.

14. This action arises out of Defendants’ violations of the Washington Charity Care Act and the Washington Consumer Protection Act RCW 19.86.

15. Because Defendants conduct business within the State of Washington, personal jurisdiction is established.

16. Venue is proper pursuant to 28 U.S.C. § 1391 because the events leading to the cause of action occurred in the City of Tacoma, County of Pierce, State of Washington.

17. At all times relevant, Defendants conducted business within the State of Washington.

PARTIES

18. Plaintiff Hull is a natural person who resides in the City of Tacoma, State of Washington.

19. Plaintiff Shrout is a natural person who resides in the City of Tacoma, State of Washington.

20. Defendant MTGH Hospital is a hospital located in the city of Tacoma, State of Washington.

21. Defendant MBH is a hospital located in the city of Tacoma, State of Washington.

22. Defendant MHS is believed to be the parent corporation of MTGH located in the City of Tacoma, in the State of Washington.

23. Defendant MHS is the owner of multiple hospitals according to MHS’s website.

GENERAL ALLEGATIONS

24. In 1989, the Washington legislature enacted the Charity Care Act and mandated the provision of charity care by all Washington hospitals. The legislature concluded that this is essential to “moderate health care costs and promote access to health care services.” RCW 70.170.010(2). It found that all hospitals must provide charity care in order to ensure access to health care for low-income residents. “Therefore, the legislature intends that charity care requirements and related enforcement provisions for hospitals be explicitly established.” RCW 70.170.010(3).
25. Washington’s Charity Care Act and its implementing regulations (collectively the “Act” or “Charity Care Act”) require all Washington hospitals to provide charity care to indigent patients, who are defined as patients with incomes at or below 200% of the federal poverty level. *See* RCW 70.170.060(5) (charity care for full amount of charges for all patients at or below 100% of the federal poverty level); WAC 246-453-040(2) (partial charity care for patients at or below 200% of poverty level); WAC 246-453-010(4) (defining “indigent persons” as “patients who have exhausted any third party sources, including Medicare and Medicaid, and whose income is equal to or below 200% of the federal poverty standards”).
26. The Charity Care Act specifically requires hospitals to affirmatively screen all patients at or near the time of admission to the hospital to determine whether they are indigent, and to conduct this affirmation screening ***before*** demanding payment for services. RCW 70.170.060(5), (6); WAC 246-453-020(1), (1)(a), (1)(b).
27. The Charity Care Act further prohibits hospital policies or practices which result in a significant reduction in the proportion of indigent patients served by the hospital. RCW 701.170.060(1).

28. These provisions require hospitals to affirmatively and proactively screen all patients at or near the time of admission to determine whether they qualify for free or discounted care based on their low income, and this initial determination “*shall* precede collection efforts directed to the patient.” RCW 70.170.060(6) (emphasis added); see also WAC 246-453-020(1)(a) (“Collection efforts shall include any demand for payment or transmission of account documents or information which is not clearly identified as being intended solely for the purpose of transmitting information to the responsible party.”).

29. This “initial determination of sponsorship status” that hospitals must make before initiating collection efforts is an affirmative screening to identify whether each patient “may meet the criteria for designation as an indigent person qualifying for charity care.” WAC 246-453-010(19).

30. Under the Charity Care Act, when a hospital fails to affirmatively screen patients to conduct this required initial determination of eligibility for charity care based on income, the hospital is precluded from engaging in collection efforts directed to the patient. RCW 70.170.060(6); WAC 246-453-020(1)(a).

31. Statewide, approximately 14% of Washington residents have household income below 100% poverty level,¹ and over 31% are in households with income below 200% of the poverty level.² Based on the current state population of approximately 7.1 million people,³ this means that approximately 994,000 state residents (14% times 7,100,000) live below 100% of poverty level and would qualify for free hospital care based on income, and another 1.2 million state residents (31% time 7,100,000 minus

¹ See <http://www.washington.edu/news/2014/09/18/poverty-income-inequality-increase-in-washington-state/>.

² See <http://kff.org/other/state-indicator/population-up-to-200-fpl>.

³ See <http://population2016.com/population-of-washington-in-2016.html>.

994,000) have incomes between 100% and 200% of poverty level and would qualify for discounted care based on their income under the Charity Care Act. *See* RCW 70.170.060(5); WAC 246-453-040(1) & (2).⁴

32. Because Medicaid expansion covers up to 138% of poverty level, over half a million adults in Washington who were previously uninsured became eligible for coverage under the Patient Protection and Affordable Care Act (“ACA”). As a result, the uninsured rate in Washington has dropped from 14 percent of the state’s population in 2013 to 7.3 percent today.⁵

FACTUAL ALLEGATIONS

33. Plaintiffs are informed and believes that contrary to Defendants’ legal obligations to affirmatively screen patients for charity care before engaging in collection efforts, Defendants have engaged, and continue to engage, in a pattern and practice of collecting or seeking to collect from their patients without first affirmatively screening patients to determine whether patients qualify for charity care based on their income.

Plaintiff Joncee Hull

34. In or around May 2016, Plaintiff Hull received emergency services from MHS at MTGH.

35. MTGH completed an emergency evaluation on Plaintiff Hull and ended up completing a gall bladder removal on Plaintiff Hull.

36. On this trip to the hospital in or around May 2016, Defendants did *not* affirmatively screen Plaintiff Hull for charity care.

37. As a result of this visit, Defendants charged Plaintiff Hull an amount which Plaintiff Hull could not afford.

38. Plaintiff Hull was underinsured at the time of service in or around May 2016.

⁴ Under 2016 poverty guidelines, 100% and 200% of poverty level for a family of four are \$24,300 and \$48,600 per year. *See* <https://aspe.hhs.gov/poverty-guidelines>.

⁵ *See* <https://www.insurance.wa.gov/about-oic/newsroom/news/2016/02-02-2016.html>.

- 1 39. Subsequently, Plaintiff Hull's account with Defendants was sent to a debt
2 collector, Puget Sound Collections ("PSC")
- 3 40. PSC subsequently started collecting money from Plaintiff Hull indicating that
4 Plaintiff Hull owed money to MTGH.
- 5 41. Defendants did not determine Plaintiff Hull's charity care eligibility before
6 sending this account to PSC for collection.
- 7 42. Defendants never contacted Plaintiff Hull regarding her hospital bill before
8 referring Plaintiff Hull's account to PSC.
- 9 43. Because of Defendants' failure to screen Plaintiff Hull, Plaintiff Hull has been
10 paying PSC from the time PSC started collecting to the present.
- 11 44. The first time Plaintiff Hull heard about this outstanding bill with Defendants
12 was when she was contacted by PSC.
- 13 45. If Defendants had affirmatively screened Plaintiff Hull for charity care, it
14 would have determined that her income was below 200% of the federal
15 poverty level in 2016 and that based on her income, she was eligible for
16 charity care under the Charity Care Act.
- 17 46. Because Plaintiff Hull was underinsured and her income was less than 200%
18 of the federal poverty level when she went to Defendants' emergency center
19 in 2016, she qualified for and should have received charity care from
20 Defendants under the Charity Care Act.
- 21 47. Through this conduct Defendants violated RCW 19.86.020 by not screening
22 Plaintiff Hull for charity care and sending Plaintiff Hull's account directly to a
23 debt collector.
- 24 48. As a result of Defendants' abusive conduct, Plaintiff Hull has monetary
25 damages in the form of payments to a debt collector.
- 26 49. As a result of Defendants' abusive conduct, Plaintiff Hull suffered actual
27 damages in the form of mental anguish and emotional distress, which was
28 manifested by symptoms including but not limited to: stress, anxiety, worry,

1 restlessness, irritability, embarrassment, loss of sleep, feelings of
2 hopelessness, and helplessness all impacting his job and personal
3 relationships.

4 **Plaintiff Sharon Shrout**

5 50. On or around March 2, 2017, Plaintiff Shrout's daughter received emergency
6 services relating to an injury to her daughter from MHS at MBH.

7 51. MBH completed an emergency evaluation on Plaintiff Shrout's daughter,
8 treated the injury, and ended up sending Plaintiff Shrout and her daughter
9 home.

10 52. On this trip to the hospital in or around March 2, 2017, Defendants did *not*
11 affirmatively screen Plaintiff Shrout for charity care.

12 53. As a result of this visit, Defendants charged Plaintiff Shrout an amount which
13 Plaintiff Shrout could not afford.

14 54. Plaintiff Shrout was underinsured at the time of service in or around March 2,
15 2017.

16 55. Subsequently, Plaintiff's account with Defendants was sent to a debt collector,

17 56. State Collection Service, Inc. ("SCS") subsequently started attempting to
18 collect money from Plaintiff Shrout indicating that Plaintiff Shrout owed
19 money to MBH.

20 57. Defendants did not determine Plaintiff Shrout's charity care eligibility before
21 sending this account to SCS for collection.

22 58. Because of Defendants' failure to screen Plaintiff Shrout, Plaintiff Shrout has
23 been receiving numerous phone calls from SCS in an attempt to collect the
24 debt.

25 59. Because Plaintiff was underinsured, she should have been screened for charity
26 care from Defendants under the Charity Care Act.

60. Through this conduct Defendants violated RCW 19.86.020 by not screening Plaintiff Shrout for charity care and sending Plaintiff Shrout's account directly to a debt collector.

61. As a result of Defendants' abusive conduct, Plaintiff Shrout has monetary damages in the form of payments to a debt collector.

62. As a result of Defendants' abusive conduct, Plaintiff Shrout suffered actual damages in the form of mental anguish and emotional distress, which was manifested by symptoms including but not limited to: stress, anxiety, worry, restlessness, irritability, embarrassment, loss of sleep, feelings of hopelessness, and helplessness all impacting his job and personal relationships.

CLASS ALLEGATIONS

63. As a result Plaintiffs brings this action on behalf of themselves and all others similarly situated, as a member of the proposed class (hereafter "Class") defined as follows:

The Class

All individuals (or their guardians or representatives) who within the statute of limitations (a) received emergency care medical treatment from Defendant MHS; (b) uninsured or underinsured by insurance or any other third-party source of payment at the time of treatment; and (c) were subject to collections even though MHS's account records show no affirmative screening to determine the patient's eligibility for charity care.

Sub-Class #1

All individuals (or their guardians or representatives) who within the statute of limitations (a) received emergency care medical treatment from MTGH; (b) uninsured or underinsured

1 by insurance or any other third-party source of payment at the
2 time of treatment; and (c) were subject to collections even
3 though MTGH's account records show no affirmative screening
4 to determine the patient's eligibility for charity care.

5 Sub-Class #2

6 All individuals (or their guardians or representatives) who
7 within the statute of limitations (a) received emergency care
8 medical treatment from MBH; (b) uninsured or underinsured by
9 insurance or any other third-party source of payment at the time
10 of treatment; and (c) were subject to collections even though
11 MBH's account records show no affirmative screening to
12 determine the patient's eligibility for charity care.
13

14 64. Plaintiffs represent, and are a member of, the Class, consisting of all persons
15 within the United States who received emergency care medical treatment
16 from Defendants, was underinsured at the time of treatment, and was subject
17 to collections even though Defendants' account records show no affirmative
18 screening to determine Plaintiffs' eligibility for charity care, within the the
19 statute of limitations.

20 65. Defendants, its employees and agents are excluded from the Class. Plaintiffs
21 do not know the number of members in the Class, but believe the Class
22 members number in the hundreds, if not more. Thus, this matter should be
23 certified as a Class Action to assist in the expeditious litigation of the matter.

24 66. The Class is so numerous that the individual joinder of all of its members is
25 impractical. While the exact number and identities of the Class members are
26 unknown to Plaintiffs at this time and can only be ascertained through
27 appropriate discovery, Plaintiffs are informed and believes and thereon alleges
28 that the Class includes hundreds, if not thousands of members. Plaintiffs

1 allege that the Class members may be ascertained by the records maintained
2 by Defendants.

3 67. Common questions of fact and law exist as to all members of the Class, which
4 predominate over any questions affecting only individual members of the
5 Class. These common legal and factual questions, which may be determined
6 without reference to the individual circumstances of any Class members,
7 include, but are not limited to, the following:

8
9 a. Whether the Charity Care Act requires Defendants to
10 affirmatively screen all patients at or near the time of admission to determine
11 whether they are indigent;

12 b. Whether under the Charity Care Act, Defendants are
13 required to conduct this affirmative screening of all patients before
14 demanding payment for services;

15 c. Whether Defendants have a pattern and practice of not
16 affirmatively and proactively screening uninsured patients at or near the time
17 of their admission to determine whether they are indigent;

18 d. Whether Defendants have a pattern and practice of
19 demanding payment from uninsured and underinsured patients without first
20 affirmatively screening them to determine whether they are indigent;

21 e. Whether Defendants pattern and practice of demanding
22 payment from uninsured or underinsured patients without first affirmatively
23 screening them to determine whether they are indigent is unfair and/or
24 deceptive;

25 f. Whether Defendants' pattern and practice of demanding
26 payment from uninsured and underinsured patients without first
27 affirmatively screening them to determine whether they are indigent is
28 unlawful under any of the causes of action asserted herein;

1 g. Whether Defendants have been unjustly enriched by
2 these practices; and

3 h. Whether the foregoing acts and conduct of Defendants
4 render them liable to Plaintiffs and the class members for restitution
5 declaratory, and injunctive relief, and/or damages.

6
7 68. As an underinsured person that received emergency care from Defendants and
8 was not affirmatively screened to determine whether they were indigent,
9 Plaintiffs are asserting claims that are typical of the Class.

10 69. Plaintiffs will fairly and adequately protect the interests of the members of the
11 Class. Plaintiffs have retained attorneys experienced in the prosecution of
12 class actions.

13 70. A class action is superior to other available methods of fair and efficient
14 adjudication of this controversy, since individual litigation of the claims of all
15 Class members is impracticable. Even if every Class member could afford
16 individual litigation, the court system could not. It would be unduly
17 burdensome to the courts in which individual litigation of numerous issues
18 would proceed. Individualized litigation would also present the potential for
19 varying, inconsistent, or contradictory judgments and would magnify the
20 delay and expense to all parties and to the court system resulting from
21 multiple trials of the same complex factual issues. By contrast, the conduct of
22 this action as a class action presents fewer management difficulties, conserves
23 the resources of the parties and of the court system, and protects the rights of
24 each Class member.

25 71. The prosecution of separate actions by individual Class members would
26 create a risk of adjudications with respect to them that would, as a practical
27 matter, be dispositive of the interests of the other Class members not parties to
28

1 such adjudications or that would substantially impair or impede the ability of
2 such non-party Class members to protect their interests.

3 72. Defendants have acted or refused to act in respects generally applicable to the
4 Class members, thereby making appropriate final and injunctive relief with
5 regard to the members of the Class as a whole.

6 **CAUSES OF ACTION**

7 **COUNT I**

8 **DECLARATORY RELIEF**

9 73. Plaintiffs repeat, re-allege, and incorporate by reference, all other paragraphs.

10 74. Pursuant to the Declaratory Judgments Act, RCW Ch. 7.24, Plaintiffs and
11 class members are entitled to a declaration that under the Charity Care Act,
12 Defendants are required to affirmatively screen all patients at or near the time
13 of admission to determine whether they are indigent, and that it is required to
14 conduct this affirmative screening before demanding payment for services.

15
16 **COUNT II**

17 **VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT**

18 **RCW 19.86**

19 75. Plaintiffs repeat, re-allege, and incorporate by reference, all other paragraphs.

20 76. Defendants' failure to comply with the Charity Care Act as set forth above
21 violates the Washington Consumer Protection Act ("CPA"), RCW 19.86, as to
22 Plaintiffs and class members.

23 77. Specifically, by failing to comply with the Charity Care Act as set forth
24 above, Defendants have engaged in, and continue to engage in, unfair and
25 deceptive acts or practices in trade or commerce in violation of the CPA by
26 failing to affirmatively screen patients for charity care and then immediately
27 sending the outstanding bill to collections without contacting the patients.
28

78. Such conduct affects the public interest and has caused injury to the business or property of Plaintiffs and class members.

79. Plaintiffs suffered emotional damages because of this conduct by Defendants.

80. As a result of each and every violation of the Washington Consumer Protection Act, Plaintiffs are entitled to any actual damages, costs, and attorneys fees pursuant to RCW 19.86.090.

81. Plaintiffs are further requesting the court treble damages pursuant to RCW 19.86.090 due to the reprehensible nature of Defendants' conduct.

COUNT III

BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

82. Plaintiffs repeat, re-allege, and incorporate by reference, all other paragraphs.

83. Defendants' conduct, as alleged above, also constitutes a breach of the covenant of good faith and fair dealing.

84. Plaintiffs and class members entered into express or implied-in-fact contractual relationships with Defendants when they went to Defendants' emergency room for the purpose of receiving emergency medical care.

85. Implied into every contract is a covenant of good faith and fair dealing. This covenant of good faith and fair dealing requires that all parties will act reasonably and will not act so as to prevent performance by the other party.

86. Under Washington law, a statutory violation can constitute a breach of covenant of good faith and fair dealing.

87. Because the requirements of the Charity Care Act are likely incorporated into the contractual relationship between Defendants and its patients, Defendants' violations of the Charity Care Act can also constitute a breach of its covenant of good faith and fair dealing.

88. Defendants violated the Charity Care Act and thereby breached its covenant of good faith and fair dealing owed to Plaintiffs and class members by failing to affirmatively screen them at or near the time of admission to determine

whether they were indigent, and demanding payment for services without conducting the required affirmative screening, and thereby caused injury and consequential damages to Plaintiffs and class members.

COUNT IV

UNJUST ENRICHMENT AND RESTITUTION

89. Plaintiffs repeat, re-allege, and incorporate by reference, all other paragraphs.
90. Defendants' actions, as described above, are unconscionable and unlawful.
91. Defendants have received money which belongs to Plaintiffs and class members which in equity and good conscience Defendants ought to pay to Plaintiffs and class members, along with interest.

COUNT V

UNJUST ENRICHMENT AND RESTITUTION (INJUNCTIVE RELIEF)

92. Plaintiffs repeat, re-allege, and incorporate by reference, all other paragraphs.
93. Plaintiffs and class members are entitled to an injunction under the CPA, under the common law, and under any other applicable laws enjoining Defendants from continuing to engage in the conduct alleged herein.
94. In particular, Plaintiffs and class members are entitled to an injunction under the CPA, under the common law, and under any other applicable laws to enjoin further violations of the Charity Care Act and/or unfair or deceptive acts and practices related to Defendants' provision of charity care (or lack thereof) to indigent persons, including an injunctive order requiring Defendants to affirmatively screen all patients at or near the time of admission to determine whether they are indigent, and requiring that it conduct this affirmative screening before demanding payment from uninsured or underinsured patients.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the class members pray that judgment be entered against Defendants, and Plaintiffs be awarded damages

from Defendants, as follows:

Plaintiffs respectfully requests the Court grant Plaintiff and Class members the following relief against Defendants:

- ¥ An order certifying the Class;
- ¥ An order certifying the undersigned counsel as Class Counsel;
- ¥ A declaratory judgment that Defendants' actions as discussed herein is unlawful;
- ¥ An order requiring Defendants, at their own cost, to notify all members of the Classes of the unlawful acts discussed herein;
- ¥ Injunctive relief stopping Defendants from further failure to affirmatively screen patients for charity care;
- ¥ Actual damages suffered by Plaintiffs and each Class member, pursuant, against Defendants.
- ¥ An award of any such amount as the Court may allow for all other class members in accordance with proof at trial, including treble damages under the CPA, against Defendants;
- ¥ An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. §§ 1681n(a)(3) and 1681o(a)(2), against Defendants;
- ¥ Award Plaintiffs and class members their costs of suit, including expert fees, and reasonable attorney's fess as provided by the CPA and other applicable law; and
- ¥ Any other relief the Court may deem just and proper.

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95. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

Respectfully submitted,

Kazerouni Law Group

Date: May 3, 2018

By: s/ **Ryan L. McBride**

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